No. 15250

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

THOMAS F. DORAN, ETHEL M. DORAN, ONEY S. RIGGS, DOROTHY F. RIGGS, IDA BEE MacDONALD, CLARA NIEMAN, GUS H. NIEMAN, JOHN W. MacDONALD, *Petitioners*

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

No. 15250

BRIEF OF APPELLANT

On Appeal from the Tax Court of the United States

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INDEX

TABLE OF CASES

TABLE OF CASES (Continued)

STATUTES

TEXTS

JURISDICTION

The above actions involve identical issues of law arising out of identical facts and circumstances (R. 58) which were consolidated for hearing. The actions were brought in the Tax Court of the United States by means of petitions to redetermine deficiency, which deficiency was determined by the Commissioner of Internal Revenue. Notice of deficiency of each petitioner before the Tax Court was mailed to the respective petitioner on November 10, 1953 (R. 8). Said notices of deficiency determined a deficiency for each of the petitioners for the year 1947. No part of said deficiency has been paid.

On February 1, 1954, petitions were filed in each of the above cases with the Tax Court of the United States; and on February 2 copy of such petitions were served on the General Counsel for the Commissioner of Internal Revenue (R. 3, 5-11). Jurisdiction of the Tax Court to redetermine the deficiency determined by the Commissioner existed under Internal Revenue Code 1939, Sec. 272, as amended by Public Law 291, 79th Cong., Sec. 203, and 1942 Act Sec. 168 (a) 26 U. S. C. Sec. 272, now incorporated in the 1954 Internal Revenue Code, Sec. 6213, 6214 and 6215, Title 26, USC, Sec. 6213, 6214 and 6215, 68A Stat. 771, 772 and 773.

The decision of the Tax Court in each case was entered on May 18, 1956, determining the deficiency in income taxes to exist for the year 1947 as against each of the petitioners. (R. 44-49). A petition for review by the United States Court of Appeals for the Ninth Circuit was filed by

each petitioner with the Clerk of the Tax Court of the United States on July 23, 1956 (R. 49-51). The tax returns in respect of which the liability arises as to each of the petitioners were filed in Tacoma, Washington, within the Ninth Circuit (R. 15). Jurisdiction of the United States Court of Appeals for the Ninth Circuit exists under 1954 Int. Rev. Code, Sec. 7482 and 7483; 26 USC Sec. 7482 and 7483; 68A Stat. 890 and 891, and Rule 29 of the Rules of the United States Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

All of the facts involved in this controversy are stipulated. The stipulation, together with the exhibits attached to the stipulation, constitute the record on the merits of this case (R. 14-35). The facts as stipulated may be summarized as follows:

Income tax deficiencies were determined by the Respondent against each of the petitioners for the year 1947 as follows:

Thomas F. Doran	$ 884.56
Ethel M. Doran	922.06
Oney S. Riggs	854.74
Dorothy F. Riggs	854.74
Ida Bee MacDonald	984.25
Clara Nieman	5,582.16
Gus H. Nieman	5,491.91
John W. MacDonald	984.25
	$16,558.67

Each of the petitioners having the same surname was husband and wife, and their income constituted community property. Each of the petitioners filed a separate income

tax return for the year 1947 with the Collector of Internal Revenue at Tacoma, Washington. The male members of each community were stockholders of and were actively engaged in the management and operation of Inland Motor Freight, a corporation. Grover C. Ealy was also a substantial stockholder and president of the corporation. There were a few other stockholders having a stock interest and at least one other person who was actively engaged in the management of the corporation who are not parties to this action.

Informal discussions were held by the stockholders of Inland Motor Freight concerning some arrangement whereby funds could be accumulated so that in case of the death of a stockholder the survivors could purchase stock of the one deceased. At a stockholders' meeting on July 3, 1943, at which all stockholders were present, a resolution was adopted by the stockholders of the corporation, a copy of which is attached to the stipulation of facts as Exhibit No. 9. (R. 22, 23)

On July 14, 1943, application was made by the corporation for life insurance upon the lives of Ealy and other officers and directors, to be payable upon death to the estate of the insured; but the company to which application was made declined to issue the policy in this form. The insurance company did, however, issue policies with Inland Motor Freight, a corporation, as beneficiary, with the proceeds payable to it. The officers of the company refused to accept the policy in this form. (R. 17-18)

The stockholders as individuals entered into an agreement dated July 10, 1943, a copy of which is attached to the stipulation as Exhibit No. 11 (R. 25-29). The signatures were not completed until November 1, 1943. Halverson and his wife, who were stockholders, did not sign the agreement. This agreement, after various recitals, appointed certain persons as trustees for the purpose of the agreement. It authorized the trustees to apply for and purchase life insurance naming themselves and their successor as beneficiaries; authorizing them to collect the proceeds; directed that each stockholder should participate in the proceeds in case of death in the same ratio as his stock; and "said proceeds when distributed may be used by the then stockholder to purchase the common stock in the company held by the one so deceased at the time of his death." (R. 27). Each stockholder and his wife also agreed with each other that upon his death his stock should be offered to the remaining stockholders at fair value, and the survivors would have 90 days within which to complete the purchase.

On October 25, 1943, a Directors' meeting was held. The minutes of this meeting recite that it was called for the purpose of considering and authorizing the parties to enter into the contract dated July 10, 1943 and "It was upon motion duly made, seconded, and carried and unanimously agreed that it would be for the best interest of the company for said stockholders to enter into said contract, and for the company to purchase said insurance." (R. 23, 24)

Application was then made by the trustees appointed by the trust agreement for life insurance upon the life of Grover C. Ealy and other stockholders and directors, with

themselves as beneficiaries. The policy was issued and dated as of November 19, 1943 (R. 29-31). The policy listed the trustees as owners and beneficiaries in their capacity as trustees under the trust agreement dated July 10, 1943 (R. 30).

Grover C. Ealy passed away March 9, 1947, and the named trustees and successor trustees claimed and received a check for the proceeds of the policy. (R. 32)

These petitioners and another stockholder then entered into a contract with Ealy's executor to purchase the stock belonging to his estate. The insurance check was used to make the initial payment. The certificates were signed by the executor and placed in the bank, to be delivered upon payment of the purchase price over a ten-year period. (R. 19)

The insurance premiums on this and the other policies were paid by the company and charged against surplus. No deduction for these payments was made in making income tax returns. (R. 20)

The premiums so paid were not charged to Grover C. Ealy or the other individuals and were not reported by Ealy and the other individuals as dividends. (R. 20)

The corporation at no time received dividends or income from the policies and did not carry the policies on its books in any way as an asset. (R. 21)

The Commissioner of Internal Revenue assessed a deficiency against each of the petitioners on the grounds that

the proceeds of the insurance policy on the life of Grover C. Ealy was income to the petitioners in the year 1947. If the proceeds of the policy constituted income to the petitioners which is not exempt as being proceeds of an insurance policy, the amount of tax assessed has been correctly computed.

SPECIFICATION OF ERRORS

I. The Tax Court erred in making the following finding:

> "In making the application for the policy of insurance upon the life of Ealy and in claiming, receiving, and disbursing the proceeds thereof at Ealy's death, the trustees were acting for and in behalf of Inland."

II. The Tax Court erred in failing to find that in making application for the policy of insurance upon the life of Ealy and in claiming, receiving, and disbursing the proceeds thereof at Ealy's death, the trustees were acting for and in behalf of the stockholders pursuant to the agreement dated July 10, 1943.

III. The Tax Court erred in its opinion that

> "Careful consideration of the minutes of the stockholders meeting of July 3, 1943, the application for insurance upon the life of Ealy, the minutes of the Board of Directors meeting of October 25, 1943, and the stockholders' contract wherein it was agreed that such insurance should be obtained and in case of the death of the insured the disposition of the proceeds of such insurance amply justify our finding of fact that the trustees in applying for the insurance and in receiving and disbursing the proceeds thereof, were acting for and in behalf of Inland. They were its agents for those purposes and did not represent the stockholders as individuals."

IV. The Tax Court erred in the portion of its opinion which reads as follows:

> "It follows that Inland received the proceeds of the Ealy policy, which although not representing income in its hands (*U. S. v. Supplee-Biddle Hardware Co.*, 265 US 189,) did represent income to petitioners, its stockholders, when distributed to them through the purchase of stock for their benefit (Isaac May, 20 BTA 282)."

V. The Tax Court erred in determining in its opinion the following:

> "Respondent has increased the taxable income of each petitioner by an amount which represents a proportion of the amount expended by the trustees for the purchase of Ealy's Inland stock, which is in exact ratio to the stock interests of Inland; we hold he has properly done so."

VI. The tax Court erred in its opinion entered May 18, 1956, determining that:

> "Decision will be entered for the respondent."

VII. The Tax Court erred in rendering its decision dated May 18, 1956, which ordered and decided that there is a deficiency in income tax for each of the petitioners for the year 1947.

SUMMARY OF ARGUMENT

This case involves a single fundamental question of law. Under the facts of this case, were the trustees acting on behalf of the corporation so that their distribution of the proceeds of the insurance policy constituted a taxable dividend, or were they acting on behalf of the individual stock-

holders so that the proceeds were exempt as being proceeds of an insurance policy paid directly to the trustees acting as agents for the stockholders.

The Tax Court, in determining that the trustees were acting on behalf of the corporation and that the distribution to the trustees was a distribution to the corporation, appeared to rely primarily on the wording of the resolution of July 3 and overlooked the real substance and nature of the transaction. It overlooked the fact that this purchase of insurance was not for a corporate purpose, but was entirely for the benefit of stockholders; it overlooked the fact that the trustees who were the owners of and entitled to the proceeds of the policy, were named and appointed by the agreement among the stockholders and not by action of the corporation; it overlooked the fact that under the agreement appointing the trustees, the corporation had no control or authority or other indicia of ownership, and finally it overlooked the fact that the payment of premiums by the corporation was in fact a distribution of income to or for the benefit of the stockholders, was income to the stockholders and therefore the stockholders in fact paid all premiums.

It is inconsistent to hold that where the corporation purchases something which is solely for the benefit of the stockholders, the money paid out by the corporation for such purchase constitutes a taxable dividend, and yet, at the same time, to hold that the thing that was purchased with the money, which the courts hold to be constructively the stockholders' money, becomes the property of the corporation, so that when it comes into the hands of the stock-

holders they are considered to have again received as a dividend what they have already paid for. The holding in this case that the insurance proceeds were taxable to the stockholders would thus be inconsistent both with reason and with the established case law holding that payment of money by a corporation for the benefit of its stockholders constitutes taxable dividends.

ARGUMENT

I. The stockholders' contract is not a corporate act.

The stockholders' contract dated July 10, 1943, does not even purport to be an act of the corporation. It is purely an agreement between the persons or stockholders of the corporation, the essence of which is that:

a. Each agrees that in the case of his death the surviving stockholders shall have a prior right to purchase his stock.

b. Trustees are appointed for the purpose of procuring insurance on the lives of certain of the officers to provide funds with which these particular stockholders may purchase such stock.

It is well established that stockholders as such can act only at a corporate meeting which is intended to be a meeting and is called as such; and any other form of action by them is void so far as it may be claimed to be a beneficial act.

> "The corporation is a body of individuals united as a single separate entity. Therefore, the corporate powers, when vested in the stockholders or members, are

> vested in them collectively, as a body, and not as individuals. They have no power to act as or for the corporation except at a corporate meeting called and conducted according to law. Action by the stockholders or members individually, and not at a corporate meeting, even though a majority may concur and even though their consent be expressed in a writing, signed by them, is not the action of the corporation and is void."
>
> 5 *Fletcher's Cyc. Corp. Sec.* 1996, *pg* 4
>
> For a concrete example, see
>
> *Barnett v. Mayer* & *Bros.*, 119 Wash. 323, 205 P. 396.

We assume that if there had been nothing more than a contract among the stockholders and they had paid the premiums themselves, there clearly would be no tax due.

What facts operated in this case to change this result in the opinion of the Tax Court? It is not possible precisely to determine this question from the Tax Court's opinion. Of course it is quite obvious from the events that transpired and the reading of the resolutions and agreement among the stockholders that the parties to this agreement and the officers and directors of the corporation had no clear concept of what they were attempting to do and it is true that the resolutions refer to the company purchasing the insurance, which appears to be the language that influenced the Tax Court in rendering its decision.

What actually happened, however, was completely inconsistent with the wording of these resolutions. First, the trustees were appointed pursuant to the terms of the agreement among the stockholders rather than by the corporation acting either through its officers, directors, or stockholders. Secondly, when the insurance company issued the

policies in the name of the company, the parties refused to accept them. After some months of negotiation, the policies were finally issued pursuant to an application made by the trustees, with the trustees as the named beneficiaries to receive the proceeds of the policies and to use them for a very specific purpose which could benefit only the stockholders and not the corporation. The corporation had no interest in the proceeds of the policy.

The resolution of July 3 (Exhibit 9) (R. 22, 23) contemplated that the company would purchase the policies, that the proceeds of the policy would be paid to the company and disbursed by the company to all the stockholders as a special dividend. Such an arrangement would be defective from several standpoints, as well as from the standpoint of its tax consequences. For one thing, the corporation cannot bind itself to pay out a special dividend in the future. Under Washington law, RCW Sec. 23.24.030, dividends may only be paid out of surplus, so that a declaration of dividend would depend upon the financial condition of the company at the time. RCW 23.24.030 provides:

> "*Declaration of Dividends*: No corporation shall pay dividends: (1) In cash or property except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets; (2) in shares of the corporation, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock."

It would also seem clear that while the corporation could take out insurance on the life of one of its officers for the benefit of the corporation, it would be clearly improper for the corporation to take out insurance on the life of one of its officers purely for the benefit of the other officers and stockholders of the company. It has even been held that a consent to a change of beneficiary under such circumstances is ultra vires. See *Wolter v. Johnston,* 34 F. 2d 598; 68 ALR 1211.

But regardless of the reason, the fact that the plans were changed before they were consummated is irrefutably proved by the fact that the insurance was not taken out by the corporation but instead was taken out by the trustees appointed by the stockholders under the terms of their contract dated July 10.

The basic problem is, who owned the insurance policy. Of course, the concept of ownership is sometimes rather difficult. General definitions can be found in 42 Am. Jur. 187, 217 (Property Section 2 and 40); also 73 CJS 135-149, 181 (Property Section 1 (b), Section 13). In *Texas Co. et al vs. Hauptman,* 91 F. 2d 449, the Circuit Court of Appeals for the Ninth Circuit said at Page 451:

> "What is property? It is 'the sum of all the rights and powers incident to ownership.'" (Citing cases) "In 22 RCL 37, Sec. 2, it is said:"
>
> "The term 'property' has a most extensive signification, and in its strict legal sense means that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or objects. But the word is often used to indicate the subject of the property or the thing owned, as a chattel

> or a tract of land. These things, however, though the subjects of property, are, when coupled with possession, but the indicia, the visible manifestations, of invisible rights, the evidence of things not seen. Much of the uncertainty and confusion observable in the decisions have arisen from overlooking this distinction; and such is the uncertainty of language that it is necessary to consider the context in order to determine the sense in which a particular word is employed, if it can ever be employed in more than one . . ."

"Following this in Section 3 it is said:"

> " 'Property, is a determinate object as heretofore defined is composed of certain constituent elements, to wit, the unrestricted right of use, enjoyment, and disposal of that object . . .' "

Who was it, then, that was the owner of this policy and specifically the owner of the proceeds of the policy which became due upon the death of Mr. Ealy? Who had the right of use, enjoyment, and disposal of that money? Could the corporation have demanded that money to be put to a general corporate use? Could the corporation have any power to change the contract of insurance prior to Mr. Ealy's death? Who had the use, enjoyment, and disposal of this insurance or its proceeds? It seems to us that the answer is quite obvious. The trustees were named and appointed pursuant to a contract among the stockholders. If any change were to have been made in the insurance contract or any part of this transaction, with the exception of the arrangement for paying the premiums, clearly the stockholders would have had to make this change as parties to the contract. The corporation, of course, could have discontinued paying the premiums at any time. As a matter of fact, if it had not had the surplus available to pay

the premiums, it would have been forced to discontinue the premiums under the Washington state corporation law, since the payment of these premiums clearly constituted the paying of a dividend. But the stockholders having all indicia of ownership and having full and complete control over the insurance policies and the proceeds of these insurance policies clearly were the ones who received the proceeds of the policies rather than the corporation.

In *Mickelberry's Food Products Co., et al vs. Haeusserman, et al,* Mo. Sup., 247 SW 2d 731, the Missouri court dealt with a similar situation. In that case there was a trust set up for the benefit of the stockholders, the premiums to be paid out of dividends or surplus. The specific case involved an interpretation of the agreement as to whether ownership of the insurance followed ownership of the stock. It is significant that no question was ever raised and no one considered that there apparently was any question as to whether or not the corporation owned the insurance. We likewise feel certain that had the question of the interpretation of the agreement concerned herein been raised in any other manner, it would not have occurred to anyone that the corporation owned the insurance or was entitled to the proceeds of the insurance.

We assume it will be argued that the corporation, however, paid the premiums and because it paid the premiums somehow it should be the owner of and entitled to the proceeds of the insurance. This would seem to be a non sequitur on its face.

It has been held that the fact that shareholders purchased property with the funds of a corporation did not necessitate

a holding that the profits from a sale of such property were an income to the corporation. See *Commissioner v. McCloskey* (CCA 5), 76 F 2d 373; *Telfair Stockton,* 26 BTA 801.

The argument, however, loses all validity when it is considered that the law has been well established that the purchase by a corporation of something which is purely or even primarily for the benefit of the stockholders constitutes a distribution to the stockholders. There are many diverse situations where this has been held to be true. See *Redhead vs. Iowa National Bank,* 127 Iowa 572, 103 NW 796, where it was held that a resolution providing for a payment by the bank for taxes on bank stock constituted a declaration of dividend equal to the taxes levied on each share where the bank was not obligated to pay the tax. Also see *William E. Freeman,* 4 TC 582, where it was held that the purchase of an annuity contract by an employer for an employee constituted income to the employee; *Chandler v. Commissioner,* (CCA 3), 119 F. 2d 623; *Dean v. Commissioner* (CCA 3), 187 F. 2d 1019; *Sam E. Wilson, Jr.,* CCA 5, 219 F. 2d 126, forgiveness of a debt by a corporation; *Earle F. Tucker,* 23 TC 115, Dec. 20, 627; *E. Lasker,* 11 TCM 50, Dec. 18, 749 (M); *Beer vs. U. S.,* 132 F. Supp. 282, and many others. But the case most closely in point is *Paramount-Richards Theaters, Inc., et al vs. Commissioner of Internal Revenue,* CCA 5, 153 F. 2d 602. In that case a corporation and an individual were equal owners of legal title to all stock of another corporation. They entered into an agreement whereby they caused the corporation to pay premiums on insurance on the life of the individual stockholder, the proceeds of which insurance were to be used to adjust the purchase price of stock

between the stockholders in the event certain options to purchase were exercised. It was held that the payment of these premiums constituted the declaration of a dividend; they were not deductible as a business expense by the corporation, and the amount of the premiums constituted income to the individual stockholders. The court said:

> "Corporate earnings may constitute a dividend notwithstanding that the formalities of a dividend declaration are not observed; that the distribution is not recorded on the corporate books as such; that it is not in proportion to stockholdings, or even that some of the stockholders do not participate in its benefits."

So, in a case such as this, where the courts have treated and clearly should treat the payment of premiums as corporate distribution, there should be no question but that the insurance purchased with these funds which constituted a corporate distribution to the stockholders should belong to the stockholders, particularly where trustees appointed by the stockholders hold legal title to the insurance.

It might be contended that this case is similar to *Golden v. Commissioner*, 113 F. 2d 590, in which case the corporation, after becoming the owner and beneficiary of a policy upon which it paid dividends, attempted to and did assign all of its interest under the policy to a trustee to pay the proceeds to certain stockholders. While we feel that the dissenting opinion in that case is the more persuasive opinion, this case can be differentiated as readily as the court distinguished the situation in *Cumberland Public Service Co. v. U. S.*, 338 U. S. 451, 94 L. ed. 251, 70 S. Ct. 280, from the Court Holding Company Case, *Commissioner v. Court Holding Co.*, 324 U. S. 331, 89 L. ed. 981, 65 S. Ct. 707. The

distinctions are rather fine in each case, but as in those cases, the incidence of taxation should depend upon the substance of the transaction regardless of "mere formalisms." In the instant case, the corporation never at any time became the owner of the policies; the trustees as trustees for the stockholders applied for and were the initial and only owners and beneficiaries of the policies. Also, in the *Golden* case the court pointed out that the corporation reserved some rights which the court stated constituted a retention of incidence of ownership sufficient to delay the occurrence of a transfer, and even under the majority opinion it would appear to us that a different result would obtain in the instant case where the corporation at no time had any of the incidence of ownership. The case of *Isaac May*, 20 BTA 282, cited by the tax court is even more clearly distinguishable since the insurance contract named the corporation as the sole beneficiary.

It was stipulated that none of the present petitioners paid taxes on their pro rata share of the premiums paid on this or any other policies of insurance. However, this factor is completely irrelevant. There is no contention of any fraud or deliberate or willful wrongdoing in this case, and no reason is shown as to why the Commissioner could not have assessed the proper taxes. Of course, if the taxes had been properly assessed, the taxpayers would have been assessed on an entirely different basis. Mr. Ealy, for instance, would have been one of the principal persons assessed. As stated in *Mertens Law of Federal Income Taxation, Vol. II, Chap.* 17, pp. 2, 3, Sec. 1701:

> "The Government can, however, only tax the right taxpayer; there can be no scapegoat for the real taxpayer who may have escaped tax."

Swartz, Inc. v. Commissioner, 69 F. 2d 633,

U. S. v. S. F. Scott & Sons, Inc., 69 F. 2d 728.

If the insurance was the property of the stockholders, and the proceeds of the policy were payable to the stockholders or to the trustees as agents for the stockholders, the proceeds are exempt under Sec. 22 (b) (1) of the 1939 Internal Revenue Code, which provides as follows:

> "Sec. 22: Gross Income.
>
> (a) General Definition . . .
>
> (b) Exclusions from Gross Income. The following items shall not be included in gross income and shall be exempt from taxation under this chapter:
>
> > (1) Life insurance. Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);"

This exemption applies to amounts received without reference to the character of the recipient. *United States v. Supplee-Biddle Hardware Co.*, 265 U.S. 189, 68 L. ed. 970. It had been held to apply even in the case where a creditor insured the life of his debtor. *Durr Drug Co. v. U. S.*, 99 F. 2d 757. The fact that the proceeds were handled by trustees rather than by the stockholders directly would not seem to be material. The Commissioner's regulations applicable to the taxpayer involved, Regulations 111, Sec. 29.22 (b) (1) -1) provided in part:

> "The proceeds of life insurance policies, paid by reason of the death of an insured to his estate or to a beneficiary (individual, partnership, or corporation), directly *or in trust*, are excluded from the gross income of the beneficiary, except in the case of certain transferees as provided in Sec. 29.22 (b) (2) - 3 and in the case of a spouse to whom such payments are income under Sec. 22(k) . . ." (Italics ours).

The same wording has been carried over into the present regulations. (26 CFR Sec. 39.22 (b) (1) - 1).

CONCLUSION

It is respectfully submitted that the proceeds of the insurance policy on the life of Mr. Ealy were clearly payable and paid to trustees on behalf of the stockholders for petitioners herein. The Tax Court's conclusion that the proceeds were payable to the corporation and were distributed by the corporation as a special dividend is wholly inconsistent with the stipulation of facts and the exhibits attached thereto.

The insurance in question was taken out by trustees appointed by the stockholders pursuant to the agreement dated July 10. The stockholders, petitioners herein, had control of and were the owners of both the insurance policy and the proceeds payable under the terms of the policy. While the corporation paid the premiums out of its funds, these funds in fact were the funds of the stockholders which should be charged constructively to them as dividends. It is illogical and inconsistent for the courts to reverse the whole theory upon which they have reached the conclusion of the taxability of the premiums to the stockholders solely for the purpose of finding in every case possible that the

taxes are payable. The tax laws are sufficiently confusing, not only to the ordinary person, but even to attorneys and accountants working with the tax laws, without now introducing a complete inconsistency which makes the incidence of taxation depend on how the Government can collect the greatest amount of taxes.

Respectfully submitted,

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